



Comptroller General
of the United States

Washington, D.C. 20548

145588

Decision

Matter of: Tate-Griffin Joint Venture

File: B-241377.2

Date: January 7, 1992

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.
Vicki E. O'Keefe, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
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DIGEST

1. Where agency advised protester that its proposed manpower was well below the government estimate and subsequently identified to protester the precise area, service work calls, where its manpower appeared deficient, agency conducted meaningful discussions since it properly alerted protester to perceived deficiency in its proposal.
2. Agency properly found unacceptable a proposal that offered less manpower than evaluators reasonably found was necessary to meet requirements; agency properly considered protester's performance under current contract where protester tried to justify its manning estimates based on its performance as incumbent.
3. Although the number of full-time equivalent personnel listed in the awardee's schedule was significantly below the government estimate for adequate manning for service call work, agency could properly find awardee's proposal acceptable where technical proposal independently demonstrated awardee's understanding of requirements, showed an intent to use personnel listed elsewhere in the schedule to perform service call work if needed, and contained overall manning sufficient to accomplish contract requirements.

DECISION

Tate-Griffin Joint Venture protests the rejection of its offer under request for proposals (RFP) No. N62467-90-R-0670, issued by the Department of the Navy for operations and maintenance at the Naval Support

Activity in New Orleans, Louisiana. The protester alleges that the agency failed to conduct meaningful discussions with Tate-Griffin and improperly evaluated proposals.

The decision responds to a request from the United States District Court for the Northern District of Georgia for a decision on the merits of Tate-Griffin's protest. The case is docketed as Tate-Griffin Joint Venture et al. v. Richard B. Cheney, et al., Civil Action No. 1 :90-CV-2158-JOF (N.D. Ga. filed Sept. 28, 1990).

We deny the protest.

I. BACKGROUND

The agency issued the solicitation on March 29, 1990, for a combination firm, fixed-price/indefinite-quantity contract. Contract line item number (CLIN) 0001 of the schedule provided for a fixed-price for all labor, supervision, tools, material, and transportation necessary to perform recurring and preventative maintenance, repairs, alteration, construction, and equipment installation for a period of 1 year. CLIN 0002 of the schedule, indefinite-quantity work, provided estimates for the purpose of evaluation-- 7,200 hours of services-type work and 14,900 hours for construction-type work--with costs expressed in terms of direct, indirect, and total unit costs per estimated hour of work. CLINs 0003-0010 of the schedule contained options for 4 additional years for both the fixed-price and indefinite-quantity portions of the contract.

In the schedule, offerors were to supply supplemental pricing information to assist evaluation of the price proposal, including the number of full-time equivalent (FTE) personnel (as well as direct labor and material cost) assigned to various items of fixed-price work as follows: A, Miscellaneous Work (daily cleanup, equipment checks and inventory); B, Service Work Authorizations; C and D, Recurring Work, including administrative reports on preventative maintenance, electrical and cathodic protection systems, and heating, ventilation, and air conditioning (HVAC systems, refrigeration, boilers, air compressors); and E through G, Miscellaneous Recurring Work, including plumbing and fire protection maintenance, swimming pool maintenance, and multi-trade maintenance.

The statement of work contained annexes. Annex 1 contained the general contract requirements, including the frequency of performance and work standards for items of routine maintenance and repair, and definitions including the definition of service call work. Annex 2 addressed service calls, which were defined to require no more than 16 estimated hours of labor or more than \$750 in material costs,

establishing a priority system and routines for handling such calls; the annex referred offerors to attachment J-C12 of the solicitation, which contained historical data on service calls and indicated a total of 11,770 calls in the year for which data were provided, broken down by priority, by month, and by craft (i.e., carpenter, painter, electrician, etc.). Annex 3 covered recurring work, standing job orders, and preventative maintenance, and annex 4 covered the indefinite-quantity job order work of CLINS 0002, 0004, 0006, 0008, and 0010.

The solicitation instructed offerors to submit technical and price proposals and provided for award to the low, technically acceptable offeror, with consideration of the following equally important evaluation factors: experience in multi-function contracts and individual functional areas; education, experience, and qualification of key management and supervisory personnel; management and administration; comprehension of specification requirements; method of operations. The instructions required a separate discussion, applicable to the overall project, of the first three evaluation factors, with discussion of the final two factors--comprehension of specification requirements and method of operations--to be provided for each of the major service areas, which were listed as follows: service work, minor and specific work (indefinite-quantity work), and recurring work (electrical distribution and cathodic protection systems; heating, ventilation, air conditioning/refrigeration; water distribution, natural gas distribution, waste water collection; swimming pool maintenance; miscellaneous recurring work).

Under the comprehension of specification requirements evaluation factor, the proposal instructions directed offerors to demonstrate their understanding of the scope of work by illustrating their proposed allocation of resources (including subcontractors), both numbers and types for each of the major service areas. The solicitation advised offerors to include detailed discussions of staffing, supervision, and skill levels, to include rationales and organization charts, expressing numbers of personnel in FTEs, including fractional FTEs "if necessary" for different classifications and employees providing services in more than one major service area.

The agency received four proposals on May 29, and the technical evaluation board (TEB) completed its review of initial proposals 2 days later. The TEB advised the chairman of the source selection board (SSB) that one offer was acceptable as submitted but that the three other offers were susceptible of being made acceptable, the primary concern being the manpower offered under the fourth evaluation factor,

comprehension of specification requirements.¹ The TEB found that although the protester proposed staffing roughly consistent with the government estimate in seven of eight areas, defined in the schedule's supplemental pricing information, it appeared to have underestimated the staffing required for service call work, proposing 14.45 FTEs for service work, well below the government estimate of 26 FTEs; because of the understaffing in this area, and the protester's overall staffing, 28 FTEs versus a government estimate of 39 FTEs, the TEB concluded that Tate-Griffin's proposal posed a high risk and that the firm would be unable to accomplish contract requirements with its proposed staffing.

By letters dated June 28, the agency advised offerors of its concerns. The agency noted a disparity between the 23 FTEs appearing on the protester's schedule and the staffing in its technical proposal, 28 FTEs; the agency asked Tate-Griffin to reconcile the two figures. In addition, the agency advised the protester specifically that its proposed total FTEs of 23 was "well below the government estimate" and asked for calculations to support its low proposed manning. Also, Tate-Griffin was asked: "How will you ensure the time and quality constraints of the contract will be met with this limited manpower?"

Despite the concerns expressed in the agency's June 28 letter, Tate-Griffin declined to provide any independent support for its proposed staffing estimates. Rather, Tate-Griffin advised the agency that it considered its staffing "sufficient to meet all of the work required in the Statement of Work. This conclusion is based on Griffin's experience in operating successfully on the current contract." The agency believed Tate-Griffin's proposal remained susceptible of being made acceptable.

On July 26, the agency requested each offeror to submit a best and final offer (BAFO) no later than August 6; in its request to the protester, the agency did not repeat its question regarding overall staffing but directed the protester's attention specifically to the service call area, "Using existing procedures for service calls, describe how response and completion times can be met with the number of FTEs allocated in your proposal. Concentrate on craftsmen FTEs and provide calculations." In response, the protester

¹Two offerors, including the protester, were rated susceptible under the fifth factor, method of operations, and the protester also received a susceptible rating under the third factor, management and organization. The TEB otherwise found all offerors acceptable under all other rating categories.

developed and provided an estimate of 1.8 hours per service call as the average service call time, apparently by applying historical data for numbers of service calls to its predetermined proposed staffing.² Tate-Griffin stated in its BAFO that it would maintain more material stock for repairs to allow shorter response time and reduced manhours per call since more work could be completed in the initial visit. It also stated that a dedicated quality control inspector and planner-estimator would reduce call-backs by improving work quality and scheduling efficiency.

As a result of its review of the protester's BAFO, the TEB advised the SSB chairman of its conclusion that despite an increase in the number of craftsmen dedicated to service calls, Tate-Griffin had not proposed sufficient manpower to perform service call work; because of this deficit in the number of FTEs for service call work, the proposal overall lacked staffing to ensure adequate performance. Further, where the protester had referred to its "operating successfully on the current contract" to support its otherwise unsupported staffing estimates, the evaluators were of the opinion that this performance had not in fact been fully successful and that a considerable backlog of work (300 service calls) remained from the current contract. The SSB concluded that based on inadequate manning, the protester's proposal was technically unacceptable under the comprehension of specification requirements evaluation factor. On September 5, the agency awarded a contract to Satellite Services, Inc. as the low, technically acceptable offeror.³

II. DISCUSSIONS AND EVALUATION

The protester argues first that the agency did not conduct meaningful discussions concerning its proposal. While conceding that the agency had specifically warned that it had proposed an inadequate number of personnel to perform

²The awardee, Satellite Services, Inc., in answer to a similar discussion question, developed an estimate of 3.1 hours per service call which, applied to the RFP's historical service call data, resulted in a requirement for 19.4 FTEs. Satellite accordingly increased its staffing from 15.9 FTEs to 19.4 FTEs. The protester, by contrast, states that it determined that 12.4 FTEs were required and estimated that this staffing "would use 1.8 hours to accomplish a service call based upon the number of service calls contained in the solicitation's historical data."

³The agency rejected two proposals, including that of the protester, as unacceptable and found the fourth offeror's price unreasonable.

the required work, the protester argues that the agency abandoned this position by failing to raise it again prior to submission of BAFOs. In this regard, the protester argues that each round of responses to discussion questions "formed the basis for further discussions." The protester argues further that by requesting Tate-Griffin to explain how it could meet service call response and completion times with the staffing proposed, the agency improperly directed its attention toward plans for accomplishing service call work, rather than overall staffing.

Initially, we note that agencies must generally conduct written and oral discussions with all offerors within a competitive range, advising them of weaknesses, excesses or deficiencies in their proposals, unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling, and providing them the opportunity to satisfy the government's requirements. Id. Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency's judgments only to determine if they are reasonable. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563.

The record before us shows that the agency judged the protester's proposal to be deficient overall in staffing. While the staffing appeared adequate to the agency in seven of eight areas listed in the schedule--including miscellaneous work, preventative maintenance reporting, electrical and cathodic protection systems, HVAC work, plumbing and fire protection, swimming pool maintenance, and multi-trade maintenance--with Tate-Griffin proposing 13.55 FTEs where the government estimated a requirement for 13 FTEs, the overall staffing deficiency clearly stemmed from the understaffing of service call maintenance, where the protester's staffing of 14.65 FTEs was far below the government estimate of 26 FTEs. In its initial discussion question, the agency specifically advised the protester that its manning was "well below the Government estimate." The agency asked for the protester's calculations to support its numbers and further asked how the protester would ensure the time and quality constraints of the contract based on the limited manpower. In response, the protester advised that it considered its manpower sufficient based on its experience in operating successfully as the incumbent. It did not respond specifically to the request to support its numbers and to show how it would ensure quality performance with the manpower proposed.

The agency then addressed a second discussion question, contemporaneous with its BAFO request, this time at the exact area from which the low manning estimates appeared to stem--undermanning of the service call work. The agency specifically asked the protester to describe, using existing procedures for service, how RFP service call response and completion times could be met with the number of FTEs allocated in its proposal. In response to the question, Tate-Griffin increased its staffing slightly and provided more information as to why it believed its staffing was adequate. We believe that these questions reasonably expressed the agency's concerns about the protester's overall staffing and identified the service call staffing as the source of that concern. In our view, therefore, the Navy pointed out the protester's deficiency and in fact pointed out the exact area in which the deficiency arose, permitting the protester to revise its offer to correct that deficiency, which is the essence of meaningful discussions. Metropolitan Fed. Network, B-232096, Nov. 21, 1988, 88-2 CPD ¶ 495. Since the discussion questions concerning total staffing and service call staffing directed the protester's attention to the precise area that caused the agency concern, we find the discussions concerning Tate-Griffin's staffing to have been reasonable. Moreover, contrary to the protester's assertion, we think the sequence of the agency's questions gave Tate-Griffin no reason to believe the agency found its staffing adequate or its explanation of its staffing satisfactory. The second question expressed the agency's same concern, albeit more specifically, that the manpower proposed was inadequate to perform the work. Furthermore, the protester's response to the first discussion question clearly did not provide the detailed information requested. The Navy's subsequent specific attempt to elicit the required information was both appropriate and reasonable.

The protester also contends that the evaluation of its proposal was improper. The protester argues first that the agency overestimated the service call work under the solicitation, that the historical data showing 11,770 service calls includes family housing, which the current solicitation does not cover. Further, the protester contends that at its first debriefing, the agency stated that it had found the protester's proposal unacceptable because of inadequate service call manning, but that at a second meeting, the agency's criticisms concerned the protester's overall staffing; the protester points to the contradictory information received at debriefings and to informational errors in the agency report as evidence that

the agency never fairly evaluated its proposal.⁴ The protester contends that by proposing more repair materials, as it did in its proposal, the staff person responding to service calls would more likely have the item needed for the repair in hand and this would have reduced the need to make a return visit, thus saving time and effort for service call work. The protester argues further that it was improper for the agency to consider its alleged poor performance as the incumbent in the course of the evaluation.

In reviewing protests concerning the evaluation of proposals, we will examine the agency's evaluation only to ensure that it had a reasonable basis. RCA Serv. Co., et al., B-218191 et al., May 22, 1985, 85-1 CPD ¶ 585. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

The primary function of a debriefing is not to defend or justify selection decisions but to provide unsuccessful offerors with information that would assist them in improving their future proposals. Mutual of Omaha Ins. Co., B-203338.2, Sept. 24, 1982, 82-2 CPD ¶ 268. Regardless of the adequacy of the explanations supplied at the two debriefings, the record shows that the protester's manning proposal was found unacceptable because its manning resources were below the government estimate and, after repeated requests, the protester failed to provide a detailed rationale to support its manpower levels; that is, to demonstrate how it could accomplish all of the work at the low manpower levels proposed. Specifically, the agency found the protester's service call manning deficient. While the protester's manning appeared adequate in all areas except service calls, the evaluators believed there was no additional manning in the other areas sufficient to support the service call work if the protester's estimates for that work proved wrong, which the government believed would be the case.

To the extent Tate-Griffin objects to the historical data in the solicitation, that protest is untimely. Our Bid Protest Regulations require that a protest such as this one which is based upon an alleged impropriety in a solicitation which was apparent prior to the closing time for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1), as amended by 56 Fed. Reg. 3759 (1991). The solicitation was clear that the agency had

⁴For example, the agency report states that Tate-Griffin reduced its staffing in its BAFO, whereas the protester actually increased its staffing; the record shows, however, that the TEB used the correct figures.

developed its estimated staffing on the basis of 11,770 service calls and expected offerors to do likewise. Despite the elimination of family housing work which was included in the incumbent contract, the agency asserts that other increased requirements will essentially balance out the elimination of the family housing requirement including more rapid service response time requirements in this RFP. Additionally, even if the agency were incorrect and the hours equal to family housing work were deleted, the record shows that the protester's staffing for service call work would still be well below the agency's estimate of the number of personnel required. Further, although the protester objects to the evaluators' reliance on its current performance in evaluating its manpower, the protester specifically put its performance under its current contract at issue by attempting during discussions to justify its manning estimates by its "operating successfully" under its current contract; the agency did not, therefore, act unreasonably in considering whether that performance demonstrated the protester's understanding of this RFP's requirements.

Tate-Griffin states that its performance is satisfactory and that the backlog of 300 service calls is the result of government demands not contemplated by the contract. Tate-Griffin filed a claim concerning the service calls which apparently has been settled. However, there is no indication in the record that the agency is incorrect that the backlog was attributable at least, in part, to the manning allocated under the current contract. In our view, the agency reasonably could be concerned that Tate-Griffin's offer of substantially the same number of service call staff under this RFP would not be adequate.

The protester in its BAFO did for the first time explain that its low FTEs for service calls were based on an anticipated service call system different than the one it currently used. This approach would consist of maintaining more material stock to allow completion of work more quickly, and in the initial visit, dedicating a quality control inspector to improve quality and reduce call-backs and a strong project manager and work control planner-estimator. The agency reasonably remained concerned that despite the protester's explanation involving improved performance through supervisory and scheduling staff, the protester's FTEs for service staff, specifically craftsmen, was inadequate based on the government's estimate and current contract experience and that the overall staffing provided no capability to reallocate if the protester's approach proved unsuccessful. Based on the record, we find reasonable the evaluation of Tate-Griffin's proposal as unacceptable for failing to demonstrate its understanding of the solicitation's manning requirements.

III. AWARD

At a debriefing on September 19, the agency advised the protester that its service call staffing was inadequate; at that time, the agency provided the protester with a copy of the contract award to Satellite Services, Inc. Upon review of the award, the protester learned that in its BAFO, the awardee had proposed only 7.2 craftsmen FTEs for service calls under the supplemental pricing information, where the protester had proposed 12.4 craftsmen FTEs in its BAFO.⁵

The protester argues that the agency improperly applied the evaluation criteria when it found Satellite Services' offer of 7.2 FTEs for service call work acceptable, while finding the protester's proposal for 12.4 FTEs for service call work unacceptable. The protester contends that in evaluating whether an offeror understood specification requirements, the proposal provided that the agency would examine the offeror's allocation of resources as evidence of that understanding. The protester interprets the source selection plan as requiring an evaluation of each area of a proposal, not merely an assessment of overall staffing, and argues that Satellite Services did not demonstrate its understanding of the effort involved in service call work, as evidenced by its offer of only 7.2 FTEs for the work.


The record shows that in its initial evaluation of proposals, the TEB found that Satellite Services had proposed a reasonable amount of manpower overall, having proposed FTE personnel in excess of the government estimate in seven of eight work categories. The supplemental pricing information however indicated that the awardee was proposing 3.7 FTEs for service call work versus a government estimate of 26. Nevertheless, the awardee's proposal made it clear that it would use personnel appearing elsewhere in the schedule to support the service call work. For example, the proposal stated that the 4 FTE carpenter/mason/painter/locksmith personnel would be "primarily" assigned to service call work, but that the plumber/pipefitters, electrician, and HVAC specialists would be primarily engaged in service call work as well, performing the recurring work "in addition" to service call work. The initial technical proposal showed that the awardee proposed 15.9 overall FTEs for service call work, although the pricing schedule contained only the 3.7 personnel assigned exclusively to that work.

⁵As clarified through discussions, the protester's initial proposal of 14.55 FTEs for service call work included indirect labor.

In response to the agency's discussion question, the awardee explained its basis for service call staffing--its development of an estimate for each service call, which it increased to an average of 3.1 hours per call in its BAFO. The awardee also recalculated its service call staffing, to estimate a requirement for 19.4 FTEs for service call work, an increase of 3.5 FTEs; this increase appeared solely under the service call section of the supplemental pricing information. Although the protester listed only 7.2 FTEs on the schedule for service call work, its technical proposal provided for 19.4 FTEs, only slightly less than the agency's estimate of 21 FTEs; further the protester's overall staffing of 41 exceeded the agency's estimate by 1 FTE. The TEB concluded that, although the proposal lacked sufficient manpower dedicated solely to service call work, its overall manpower was more than adequate to meet the solicitation requirements including any necessary reallocation to the service call work without diminution of performance elsewhere.

While we agree with the protester that the awardee was bound to demonstrate its understanding of the specification requirements and that the supplemental pricing information in the schedule was one vehicle for demonstrating this understanding, we find nothing objectionable in the awardee's using other portions of its proposal to demonstrate its understanding of requirements. As the protester noted in challenging its own elimination from consideration, there was apparently no obligation on any offeror's part to use the staffing set forth in the supplemental pricing information to perform the work. The source selection authority was concerned that the awardee's service call staffing was underestimated, but believed that the awardee's overall staffing was more than adequate to cover all contract requirements and that the awardee had shown how it would manage the workload. Based on the record, we find the agency's determination that the proposal of Satellite Service was technically acceptable to be reasonable and in accordance with the provisions of the solicitation.

We deny the protest.


James F. Hinchman
General Counsel